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In the Supreme Court of the United States

No. 796

OCTOBER TERM, 1942.

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE MISSOURI-KANSAS-TEXAS RAILROAD, an unincorporated association,

Petitioner,

v.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation, MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS, a corporation, and GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, an unincorporated association,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
To the United States Circuit Court of Appeals for the Fifth Circuit and
BRIEF IN SUPPORT THEREOF.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

May it Please the Court:

General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, petitioner, prays that a writ of certiorari issue to review the judgment and decree of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above entitled cause, numbered therein No. 10115, modifying and affirming the declaratory decree and judgment of dismissal of the United States District Court for the Northern District of Texas, Dallas Division (R. 68).

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. 296-302) is reported in 132 F. 2d 91. The findings of fact and conclusions of law and the opinion of the District Court are not reported but are found in the record (R. 70-78).

JURISDICTION.

The opinion and declaratory judgment or decree of the Circuit Court of Appeals were entered on December 9, 1942 (R. 303). Petitioner's petition for rehearing was denied January 21, 1943 (R. 307). The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. §347).

STATEMENT.

The parties will sometimes be referred to hereinafter as follows: the petitioner, General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Missouri-Kansas-Texas Railroad, as the "representative of the engineers' craft" or "Engineers' Committee"; the respondents, Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, as the "carrier," and the respondent, General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, as the "representative of the firemen's craft" or "Firemen's Committee."

Petitioner Engineers' Committee is, and for more than forty years has been, the designated representative of the craft of locomotive engineers on the carrier's lines of railroad (R. 21, 22, 95), the carrier being one subject to the Railway Labor Act (R. 21, 40). On December 12, 1940, as a result of collective bargaining, the carrier, without joinder or consent of the Engineers' Committee, entered into a so-called Mediation Agreement with the representa-

tive of the firemen's craft (R. 27-32), which Mediation Agreement contained three rules pertaining to the entry into the engineers' craft and to services to be performed by members of that craft, the result of which changed existing agreements of long standing between the carrier and the Engineers' Committee and an existing practice under a tacit or implied understanding between the carrier and the Engineers' Committee (R. 27, 29-32, 108, 116-121, 126-128, 141, 158-159, 168-169).

Whereas one rule, as theretofore agreed upon by the carrier and the Engineers' Committee, had required the use as an emergency engineer of the senior available demoted engineer[1] whose home terminal was at the point where the service was required (R. 108, 116-118), Item 1 of the Mediation Agreement removed the limitation with respect to the terminal and required the use of the senior available demoted engineer without reference to the location of his home terminal (R. 27).

Whereas a second rule, as agreed upon between the carrier and the Engineers' Committee, had provided for the regulation of the working lists of engineers[2] by the railroad and the Engineers' Committee, and the practice of having the lists regulated by said Committee alone had become definitely established thereunder (R. 158-9, 168-169, 108, 126-128), Item 2 of the Mediation Agreement, as interpreted and applied by the carrier, required that the regulation of the engineers' lists be handled by the carrier, the

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[1] A demoted engineer is one demoted from the working lists of engineers and, in most cases, working as a fireman.

[2] The working lists of engineers are lists of the men who are to be employed regularly as engineers for a given period. The regulation of such lists includes the regulation of the number of men on such lists, and the adding of men thereto or removing them therefrom, as the amount of work fluctuates. Men added, in most cases, come from the firemen's working lists, and, when removed, may return to the firemen's working lists. (R. 96, 102-103, 214, 218-219.)

Engineers' Committee and the Firemen's Committee (R. 27, 29-31, 148-149).

Whereas a third rule, as agreed upon between the carrier and the Engineers' Committee, had required that, in case of a vacancy in the engineers' "pool"[3] at Smithville, Texas, when the engineers' extra board[4] was exhausted, the vacancy should be filled by "setting up" or assigning the next pool engineer (R. 108, 119-121), Item 3 of the Mediation Agreement required such vacancy to be filled by calling the senior available demoted engineer, regardless of where he was located in the seniority district, and without reference to whether he was located at the terminal where the service was to be performed (R. 27-28, 31-32).

On December 19, 1940, the carrier gave notice that it would cancel the said existing agreements which had been entered into with the Engineers' Committee covering the subjects contained in Items 1 and 3 of the Mediation Agreement of December 12, 1940 (R. 108, 128-131). Following such notices conferences were held between the Engineers' Committee and the carrier, but no agreement was reached (R. 161). Petitioner then invoked the aid of the Mediation Board, but mediation failed (R. 161). On March 24, 1941, the carrier again gave notice, under Section 2, Sixth, of the Railway Labor Act, that the agreements with petitioner would be cancelled as of April 13, 1941 (R. 108, 137-138), and they were so cancelled by the carrier on such date (R. 161). Notice was not given of any change in the existing practice covered by Item 2 of the Mediation Agreement, but the carrier changed the practice by requiring concurrence of the firemen's representative in the regulation of the engineers' working lists (R. 149).

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[3] The engineers' pool is a list of engineers working "first in, first out," in a particular class of service.

[4] The engineers' extra board is a list of extra engineers from which vacancies in assigned or pool service are filled.

Petitioner then instituted this action seeking a declaratory decree to the effect that, as the representative of the engineers' craft, it had the exclusive statutory right, created by the Railway Labor Act, to treat, bargain, and contract collectively with the carrier concerning all rules and working conditions which pertain to the entry into the craft of locomotive engineers or govern the service to be performed by members of that craft; that the three items covered by the Mediation Agreement, hereinbefore set forth governed the regulation of such matters; hence the carrier had violated the Railway Labor Act in bargaining, and in entering into the Mediation Agreement, with the representative of the firemen's craft, and, therefore, the Mediation Agreement should be declared void (R. 20-34). While petitioner objected to the fact that the Mediation Agreement was in conflict with the rules theretofore agreed upon between petitioner and the carrier, the theory upon which petitioner's action was based and the vice complained of were the illegality of the carrier's bargaining with the representative of the firemen's craft, and its contracting with the latter concerning the subject matter of the Mediation Agreement.

With permission of the District Court the carrier made the representative of the firemen's craft third party defendant.

The District Court held that the matters covered by the Mediation Agreement affected both crafts, that the carrier had the right to negotiate and contract with the designated representative of each craft concerning matters covered by the Mediation Agreement, that the Mediation Agreement was valid and did not violate the Railway Labor Act or infringe any right or agreement of the petitioner; and on June 30, 1941, entered a declaratory decree accordingly, but nevertheless dismissed petitioner's complaint (R. 68-78).

The Circuit Court of Appeals held that the Engineers' Committee did not have the exclusive right to bargain and agree concerning the subjects covered by the Mediation Agreement, and that the matter was of concern to both crafts; that the Mediation Agreement was not illegal, but that the same was incomplete as not binding the craft of engineers. The Circuit Court of Appeals entered a declaratory decree in lieu of the decree of the District Court and affirmed the judgment of the District Court as so modified (R. 296, 304).

STATUTE INVOLVED.

This case involves the construction of the Railway Labor Act as amended (Act of May 20, 1926, c. 347, 44 Stat. 577; Act of June 21, 1934, c. 691, 48 Stat. 1185; 45 U.S.C. §§ 151 *et seq.*). Pertinent sections are set forth in the Appendix hereto.

Portions of the Act more particularly involved are here quoted:

Paragraph First of Section 2 provides that

> "It shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions * * * in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Paragraph Second of Section 2 provides that

> "All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

Paragraph Fourth of Section 2 provides, in part, as follows:

"Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. * * *."

Paragraph Ninth of Section 2 provides, in part, that when a craft representative has been duly designated "the carrier shall treat with the representative * * * as the representative of the craft or class for the purposes of this Act."

QUESTIONS PRESENTED.

(1) Does the Railway Labor Act, which creates in the majority of a craft or class "the right to determine who shall be the representative of the craft or class for the purposes of" the Act (a) vest in the duly designated representative of the craft of locomotive engineers the exclusive right to bargain and contract collectively concerning the rules and working conditions which pertain to entry into said craft and to the service to be performed by members of said craft, notwithstanding that members of the craft of locomotive firemen claim to be interested in, or concerned with, such rules; or does that Act (b) permit or direct dual representation, by the craft representatives of the two crafts, concerning such rules?

(2) Was the right of the designated representative of the craft of locomotive engineers invaded and infringed when the carrier bargained with the designated representative of the firemen's craft and entered into an agreement with said firemen's representative concerning rules governing (a) who should be called to perform service as an emergency locomotive engineer when the engineers' extra board is exhausted, (b) the regulation of the working lists of engineers, and (c) the method of filling vacancies on the engineers' pool board when no extra engineers are available to perform service as engineers?

REASONS FOR GRANTING THE WRIT.

1. The decision of the Circuit Court of Appeals in the instant case, 132 F. 2d 91, is in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit on the same matter in the case of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers for Pacific Lines of Southern Pacific Co. v. Southern Pacific Co. et al.*, 132 F. 2d 194.

2. The Circuit Court of Appeals has decided a federal question probably in conflict with the decision of this Court in *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515.

3. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

4. The Circuit Court of Appeals has erroneously decided questions of great public importance which affect the relationships between employer and employees on practically all railroads in the country and the proper functioning of the Railway Labor Act, as amended.

Argument in support of these reasons is contained in our brief, *post*.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari should be granted to review the judgment of the Court below.

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Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

OPINIONS BELOW.

The opinion of the Circuit Court of Appeals and the record reference to the unreported opinion of the District Court are cited in the petition.

JURISDICTION.

The grounds on which the jurisdiction of this Court is invoked are stated in the petition.

STATEMENT.

A statement of the case has been set forth in the petition and in the interest of brevity is not repeated here.

STATUTE INVOLVED.

This case involves the construction of the Railway Labor Act as amended (Act of May 20, 1926, c. 347, 44 Stat. 577; Act of June 21, 1934, c. 691, 48 Stat. 1185; 45 U. S. C. §§ 151 *et seq.*). Pertinent sections are set forth in the Appendix hereto.

SPECIFICATION OF ERRORS INTENDED TO BE URGED.

The Circuit Court of Appeals erred:

(1) In holding that the petitioner, as the representative of the craft of locomotive engineers on the Missouri-Kansas-Texas Railroad, did not have the exclusive right under the Railway Labor Act to confer and agree with the carrier concerning the rules governing the entry of employees into the craft of engineers, whether such entry resulted from a transfer of employees from the craft of firemen to the craft of engineers, or otherwise.

(2) In holding that such matter was the concern of both the crafts of locomotive engineers and locomotive firemen, and that the representatives of both crafts are by the Act directed to confer, and, if possible, agree.

(3) In holding that the Mediation Agreement between the carrier and the Firemen's Committee is not illegal and void.

(4) In failing to hold that the right to negotiate and make with the carrier agreements concerning rules and working conditions of the craft of locomotive engineers is exclusively the right of petitioner as the duly designated representative of that craft.

(5) In failing to hold that the action of the carrier in negotiating with the Firemen's Committee concerning the rules contained in the Mediation Agreement was illegal.

ARGUMENT.

The argument herein contained is not addressed to the merits of the case, discussion of the merits being reserved for petitioner's brief in the event the writ is allowed, but is directed to the support of the reasons for granting the writ.

1. The decision of the Circuit Court of Appeals in the instant case is in conflict with the decision of another Circuit Court of Appeals on the same matter.

The decision of the Circuit Court of Appeals for the Fifth Circuit in this case, 132 F. 2d 91, is in direct conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of *General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company v. Southern Pacific Company et al.*, 132 F. 2d 194, decided November 13, 1942, petition for rehearing denied with modification of opinion, on January 22, 1943.

With respect to the first of the Questions Presented herein, the *Southern Pacific* case upholds the exclusive right of craft representation and denies dual representation in clear and distinct contrast to the decision in the instant case which upholds dual craft representation and denies exclusive craft representation.

The subject matter of the instant case, to wit, the regulation of the working lists of engineers and the calling of engineers to perform emergency service, is substantially identical with the subject matter of the *Southern Pacific* case considered and discussed therein under point B beginning at page 202 of the opinion, as reported in 132 F. 2d.

In the *Southern Pacific* case the plaintiff, the General Committee of Adjustment of the Brotherhood of Locomotive Engineers, which was the engineers' craft representative, had agreements with the carrier concerning the mileage regulations of engineers, the return to the engi-

neers' working lists of men who had previously been demoted, and the calling of emergency engineers. These mileage regulations and the rules governing the return of demoted engineers to the engineers' working lists were similar to or substantially identical with the regulations of these matters contained in the engineers' and firemen's schedules on the Missouri-Kansas-Texas Lines (R. 96, 102-103, 214, 218-9). The rule governing the calling of emergency engineers in the *Southern Pacific* case* is as follows:

> "It is agreed that when it is necessary to use demoted or hired engineers as the result of the engineers' extra board being exhausted, the senior available engineer will be used, and the fact that he may have earned his maximum mileage as a fireman will not prevent him from being used as an engineer until such time as he has earned the equivalent of the maximum mileage for engineers in the combined service."

As shown in the decision in the *Southern Pacific* case, 132 F. 2d at 203-204, there were included in the firemen's schedule or agreement on that railroad certain rules dealing with mileage regulations which provided for the return of demoted engineers to the working lists of engineers when it could be shown that certain specified maximum mileages could be made by the engineers on the engineers' working lists. Some of these rules became a part of the firemen's agreement as a result of a Mediation Agreement between that carrier and the firemen's craft representative, the General Grievance Committee of the Brotherhood of Locomotive Firemen and Enginemen, on that railroad. These rules also were similar to the regulations contained in the engineers' and firemen's schedules on the Missouri-Kansas-Texas Lines mentioned above. There were also included in the said firemen's agreement on the Southern Pacific certain questions and answers, growing out of the

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* Quoted from pp. 303-304 of the Record in the Ninth Circuit Court of Appeals.

said Mediation Agreement, dealing with the calling of emergency engineers. These were appended to Article 37, Section 15 of the said firemen's agreement, and were as follows:

> "Question: (a) If it becomes necessary to call a fireman for service as an emergency engineer, when the engineers' extra list is exhausted, who should be called?
>
> (b) Should a senior demoted engineer holding assignment as fireman become available after man used under (a) returns to terminal or completes day's work, who should be used?
>
> Answer: (a) The senior available qualified man in accordance with his seniority as engineer.
>
> (b) The senior available man."

In the instant case Item 1 of the Mediation Agreement (R. 27) provides that when necessary to call a demoted engineer the senior available demoted engineer will be called. Item 3 of the Mediation Agreement and accompanying letters (R. 27, 32) provide for the elimination of an exception to the rule concerning emergency engineers as theretofore agreed upon between the petitioner and the carrier and which had been in effect only at Smithville, Texas. It is thus apparent that the situation in the *Southern Pacific* case concerning the rules for calling of emergency engineers is substantially identical in fact and identical in principle with the situation in the instant case. Likewise, the controversies concerning mileage regulation in the *Southern Pacific* case and in the instant case are identical in principle, although they deal with different aspects of such regulation.

The Engineers' Committee contended in both cases that the rules in question were engineers' rules and the respective carriers had no right to negotiate or contract with the Firemen's Committee respecting them.

With respect to these matters the Circuit Court of Appeals for the Ninth Circuit in the *Southern Pacific* case

held that the Railway Labor Act "contemplates that the cleavage of the powers of the firemen's and engineers' crafts to agree with the employer is at the point of imposing conditions of entry into the one craft or the other," 132 F. 2d 194, 205, and with particular reference to the aforementioned questions and answers governing the calling of engineers for emergency service the court decreed that they were "valid only in so far as they relate to their rights as firemen as such under said section (that is, Article 37, Section 15 of the firemen's agreement) and they are invalid under said Act in so far as they relate to entry of firemen into the craft of engineers," 132 F. 2d 194, 206.

With respect to the provisions in the firemen's agreement concerning mileage regulations and the return of demoted engineers to the working lists of engineers, the court held that such regulations are to be interpreted in effect as claimed by the Engineers' Committee, namely, that such regulations should "be limited in their application to conditions under which demoted engineers enter, remain in, and leave the firemen's craft, and that said sections [regulations] are invalid in so far as they seek to prescribe conditions of reentry into the engineers' craft or to regulate the mileage of engineers or the number of engineers to be assigned to engineers' working lists, whether in passenger, freight, or extra service," 132 F. 2d 194, 205.

Thus the decision of the Ninth Circuit Court of Appeals in the *Southern Pacific* case holds invalid the rules in the firemen's schedule concerning the calling for service as emergency engineers and the regulation of the working lists of engineers, for the reason that the cleavage of the power of the two crafts is at the point of imposing entry into the one craft or the other. As held in that case, the regulation of the engineers' working lists and the calling of emergency engineers for service as engineers is for regulation by the engineers' craft representative exclusively.

On these same matters the decision of the Fifth Circuit Court of Appeals in the case at bar held that the inclusion in the firemen's schedule of rules governing the regulation of the working lists of engineers and the calling for service of emergency engineers was not invalid and that the engineers did not have an exclusive right of representation in such matters, and that such matters were the concern of both crafts.

The *Southern Pacific* decision stands for and upholds the doctrine of exclusive craft representation. The decision in the instant case stands for and upholds the doctrine of dual representation. These two decisions as they now stand cannot be reconciled.

2. The Circuit Court of Appeals has decided a federal question in a way probably in conflict with the decision of this Court in Virginian R. Co. v. System Federation No. 40, 300 U. S. 515.

In *Virginian R. Co. v. System Federation No. 40*, 300 U. S. 515, the doctrine was firmly established that the duly designated representative of a craft or class has the exclusive right to negotiate a collective agreement "concerning rates of pay, rules and working conditions" for the employees comprising the craft or class it represents. This Court there said (p. 548) that the Act "imposes the affirmative duty to treat only with the true representative, and hence the negative duty to treat with no other."[1] The injunction there upheld, the Court continued, "must be taken to prohibit the negotiation of labor contracts, gener-

[1] The Court in a footnote quoted with approval the following statement from the Government's brief in this case:

> "When the majority of a craft or class has (either by secret ballot or otherwise) selected a representative, the carrier cannot make with anyone other than the representative a collective contract (i.e., a contract which sets rates of pay, rules, or working conditions), whether the contract covers the class as a whole or a part thereof."

ally *applicable to employees in the mechanical department* [i.e., those represented by the respondent System Federation] with any representative other than respondent ***." (Emphasis ours).

In the case at bar, the rules contained in the Mediation Agreement are, in terms, *applicable only to engineers.* They govern the entry of employees into the craft of engineers and service to be performed in the engineers' craft. Since these rules were negotiated by a representative other than the duly designated representative of the engineers, it follows, under the *Virginian R. Co.* case, that the action of the railway in bargaining upon this subject was unlawful, and that the agreement therefore must be held void.

The decision of the Circuit Court of Appeals herein is in conflict with the principle of exclusive craft representation as declared in the *Virginian R. Co.* case. The Circuit Court decreed and declared (1) that petitioner "has not the exclusive right under the Railway Labor Act to confer and agree about the rules transferring employees from the craft of firemen *to* the craft of engineers" (R. 302). The effect of this declaration is that petitioner has not the exclusive right to confer and agree respecting the rules applicable to the craft of engineers, i.e., the rules governing who may *take* or *fill* assignments as emergency engineers or in pool service and who shall regulate engineers' mileage.

The Circuit Court decreed and declared (2) that the representatives of both crafts are by the Act *directed* to confer with the employer on the subject of such rules (R. 302). This construction of the Act requires what amounts to dual representation of the craft of engineers. It means that the Engineers' Committee cannot make and maintain engineers' rules without the participation and concurrence of the Firemen's Committee. Plainly, this is not the ex-

clusive representation provided for by the Act, as construed in the *Virginian R. Co.* case.

The fact that the Circuit Court held that the Mediation Agreement is not binding upon the craft of engineers and is "incomplete" (R. 302) does not obviate the conflict with the *Virginian R. Co.* case. In holding that the Mediation Agreement is not illegal and void (R. 302), the Circuit Court permits the Agreement to remain in effect, with the anomalous result that the engineers' rules now in force are those negotiated by a representative other than the duly designated representative of the engineers' craft. In declaring (R. 302) that the employer can terminate the agreement if the engineers do not acquiesce in it (thereby making termination optional, and placing the burden upon the engineers to persuade the company to terminate) the Circuit Court disregards this Court's interpretation of the negative provisions of the Act which prohibit the carrier from negotiating with a representative other than the true one. The result is that the Circuit Court has deprived petitioner of its right to have the agreement declared void. Moreover, that the fact that the Circuit Court held that the agreement is not binding upon the engineers does not furnish escape from conflict with the *Virginian R. Co.* case on the subject of dual representation, for, in future negotiations respecting these or similar rules, the Circuit Court's construction would require dual, rather than exclusive, representation.

3. The Circuit Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court.

4. The Circuit Court of Appeals has erroneously decided questions of great public importance which affect the relationships between employer and employees on practically all railroads in the country and the proper functioning of the Railway Labor Act, as amended.

This Court should grant certiorari to settle the important question of the construction of the provisions of the Railway Labor Act concerning craft representation. The extent of the right of exclusive representation in the craft representative vitally affects the functioning of the Act. The case at bar exhibits the conflicts which arise between craft representatives over the exclusive right to make agreements covering their respective crafts—a type of controversy generally known as jurisdictional disputes. There are 23 crafts on the railroads which are covered by such agreements.[2] Such disputes may arise between many of these crafts; for example, between engineers and firemen, conductors and trainmen, telegraphers and clerks, and various of the shop crafts. The importance[3] to the public as well as to the parties of the questions here presented is demonstrated by the following facts. The craft representatives, which are usually the so-called national or standard railway labor organizations, represent the great majority of all members of their crafts in railroad employ throughout the country. Such disputes characteristically

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[2] Eighth Annual Report of the National Mediation Board (1942), p. 42.

[3] "After a labor organization establishes its right to represent a craft or class of employees the most important task which confronts it, as well as the carrier, is to negotiate a labor agreement." National Mediation Board, op. cit. p. 40.

involve a threatened strike.[4] In the absence of settlement of these questions by this Court, disputes of this character are likely to spring up all over the country, as in the case of *General Committee of Adjustment etc. v. Southern Pacific Co., supra.* The long history of such disputes renders it unlikely that they can be settled by the parties without the aid of a decision of this Court construing the statutory right of exclusive representation. It is confidently asserted that a decision of this Court herein will serve as a needed guide by which such controversies may peacefully be settled and collective craft agreements may be made and maintained as contemplated by the Act.

The petitioner earnestly contends that dual representation, as here permitted and approved by the Circuit Court, can only result in chaos. Where there is rivalry between crafts, as between engineers and firemen, and conductors and trainmen, there is hardly a rule of one craft in which, under the Circuit Court's theory of representation, some members of the rival craft would not be interested. Yet the Circuit Court's holding is that under such circumstances no valid "perfect or complete" collective bargaining agreement can be made unless all crafts whose members have any interest therein join in the agreement. Naturally, such rivalry renders it exceedingly difficult, if not impossible, to consummate tri-partite agreements. The result is that dual representation would frustrate the purpose of the Act in facilitating the making and maintaining of *craft* agreements —a most important feature of the statutory plan.

The construction of the Act sought by petitioner resolves these rivalries. Petitioner contends that the right of representation and the terms "rules" and "working con-

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[4] In the instant case, the Mediation Agreement was made under pressure of a threatened strike by the firemen (R. 198), and the decision of the Circuit Court of Appeals, in stating that the carrier is not protected against the "discontent" of the engineers over its terms (R. 301), indicates that ultimately the engineers might have to resort to a strike to secure its cancellation.

ditions," as used in the Act, should be construed to the following effect:

The exclusive right of a duly designated representative of a craft to bargain collectively extends to the rules and working conditions which govern that craft, including rules which pertain to the entry into the craft and the services performed or to be performed by the members of such craft.

Such a construction will result in rules which are feasible and workable, and just and equitable to each craft.

The decision of the Fifth Circuit Court of Appeals creates complete confusion as to the meaning of the Act. The Ninth Circuit Court of Appeals holds that the right of craft representation is exclusive. The Fifth Circuit Court of Appeals says that any craft whose members have an interest in any of the rules or working conditions of another craft must join in the agreement establishing such rules before the contract may be complete. Under such inconsistent constructions of the Act, it will fail of its purpose as "an instrument of peace rather than of strife." *Texas and N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548, 570.

CONCLUSION.

It is respectfully submitted that a writ of certiorari should be issued.

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APPENDIX.

Sections 1 and 2 of the Railway Labor Act of May 20, 1926, c. 347, 44 Stat. 577, as amended June 21, 1934, c. 691, 48 Stat. 1185, U.S.C., Tit. 45, §§ 151-163.

DEFINITIONS

SECTION 1. When used in this Act and for the purposes of this Act—

First. The term "carrier" includes any express company, sleeping-car company, carrier by railroad, subject to the Interstate Commerce Act, and any company which is directly or indirectly owned or controlled by or under common control with any carrier by railroad and which operates any equipment or facilities or performs any service (other than trucking service) in connection with the transportation, receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, and handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the business of any such "carrier": Provided, however, That the term "carrier" shall not include any street, interurban, or suburban electric railway, unless such a railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Mediation Board or upon complaint of any party interested to determine after hearing whether any line operated by electric power falls within the terms of this proviso.

Second. The term "Adjustment Board" means the National Railroad Adjustment Board created by this Act.

Third. The term "Mediation Board" means the National Mediation Board created by this Act.

Fourth. The term "commerce" means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation.

Fifth. The term "employee" as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is hereby conferred upon it to enter orders amending or interpreting such existing orders: Provided, however, That no occupational classification made by order of the Interstate Commerce Commission shall be construed to define the crafts according to which railway employees may be organized by their voluntary action, nor shall the jurisdiction or powers of such employee organizations be regarded as in any way limited or defined by the provisions of this Act or by the orders of the Commission.

Sixth. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a carrier or group of carriers or by its or their employees, to act for it or them.

Seventh. The terms "district court" includes the Supreme Court of the district of Columbia; and the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

This Act may be cited as the "Railway Labor Act."

General Purposes

Sec. 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

General Duties

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce

the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. No carrier, its officers, or agents shall require any person seeking employment to sign any contract or

agreement promising to join or not to join a labor organization; and if any such contract has been enforced prior to the effective date of this Act, then such carrier shall notify the employees by an appropriate order that such contract has been discarded and is no longer binding on them in any way.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large

type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. If any dispute shall arise among a carrier's employees as to who are the representatives of such employees designated and authorized in accordance with the requirements of this Act, it shall be the duty of the Mediation Board, upon request of either party to the dispute, to investigate such dispute and to certify to both parties, in writing, within thirty days after the receipt of the invocation of its services, the name or names of the individuals or organizations that have been designated and authorized to represent the employees involved in the dispute, and certify the same to the carrier. Upon receipt of such certification the carrier shall treat with the representative so certified as the representative of the craft or class for the purposes of this Act. In such an investigation, the Mediation Board shall be authorized to take a secret ballot of the employees involved, or to utilize any other appropriate method of ascertaining the names of their duly designated and authorized representatives in such manner as shall insure the choice of representatives by the employees without interference, influence, or coercion exercised by the carrier. In the conduct of any election for the purposes herein indicated the Board shall designate who may participate in the election and establish the rules to govern the election, or may appoint a committee of three neutral persons who after hearing shall within ten days designate the employees who may participate in the election. The Board shall have access to and have power to make copies of the books and records of the carriers to obtain and utilize such information as may be deemed necessary by it to carry out the purposes and provisions of this paragraph.

Tenth. The willful failure or refusal of any carrier, its officers or agents to comply with the terms of the third, fourth, fifth, seventh, or eighth paragraph of this section shall be a misdemeanor, and upon conviction thereof the carrier, officer, or agent offending shall be subject to a fine of not less than $1000 nor more than $20,000 or imprisonment for not more than six months, or both fine and imprisonment, for each offense, and each day during which such carrier, officer, or agent shall willfully fail or refuse to comply with the terms of the said paragraphs of this section shall constitute a separate offense. It shall be the duty of any district attorney of the United States to whom any duly designated representative of a carrier's employees may apply to institute in the proper court and to prosecute under the direction of the Attorney General of the United States, all necessary proceedings for the enforcement of the provisions of this section, and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States: Provided, That nothing in this Act shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent.